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Senate Bill_____
By
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House No. HB1701
By Kisber

AN ACT to amend the franchise and excise taxes payable by hospital companies, to provide franchise/excise tax credits based upon a portion of the cost of medical supplies and equipment used by or placed in service by hospital companies in this state, to provide definitions of a "hospital," "hospital company," "medical equipment" and "medical supplies," to require hospital companies to file franchise/excise tax returns on a combined basis, and to amend Tennessee Code Annotated, Sections 67-4-804, 67-4-808, 67-4-812 and 67-4-911, and Title 67.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Section 67-4-804, subsection (a) is amended by adding the following new subdivisions:

( ) "Hospital" shall have the definition provided at Section 68-11-201, provided that as used in this chapter a "hospital" must hold a license as such from the Tennessee Health Facilities Commission, and a "hospital" shall not include nursing homes, ambulatory surgical treatment centers or other healthcare facilities enumerated and defined in Title 68, Chapter 11, unless operated as a part of and in connection with a hospital.

( ) "Hospital Company" means a corporation or other entity subject to the taxes imposed under parts 8 and 9 of this chapter substantially all of the activities of which during the taxable year constitute the performance of health care services and which either

(A) owns and manages ten or more hospitals, or

(B) performs health care services for ten or more hospitals owned and managed by a corporation or other entity which is in its same controlled group as defined by Section 267(f)(1) of the Internal Revenue Code of 1986, as amended.

The requirement of owning and managing ten or more hospitals shall be met if on an aggregate basis ten or more hospitals are owned and managed, including all hospitals owned and managed by members of the same controlled group and including all hospitals owned and managed by such partnerships and limited liability companies as would be included in the controlled group if they were corporations or other entities subject to the taxes imposed under parts 8 and 9 of this chapter. The requirement of performing health care services for ten or more hospitals shall be met if on an aggregate basis health care services are performed for ten or more hospitals, including all hospitals owned and managed by members of the same controlled group and including all hospitals owned and managed by such partnerships and limited liability companies as would be included in the controlled group if they were corporations or other entities subject to the taxes imposed under parts 8 and 9 of this chapter.

A corporation or other entity which is a partner holding a fifty percent (50%) or greater capital interest in a partnership or a member holding a fifty percent (50%) or greater capital interest in a limited liability company which owns and manages one or more hospitals shall be deemed to own and manage the hospital or hospitals owned and managed by such partnership or limited liability company. The term "substantially all of the activities" as used in this subsection means that eighty percent (80%) or more of the time spent by employees of the corporation or other entity, serving as employees, is devoted to

the performance of health care services. The performance of health care services includes performance of the following services:

(A) The provision of acute, rehabilitative, chronic and preventive services to inpatient and outpatient hospital patients;

(B) Management, direction and supervision of employees, non-employees, and partners engaged in the provision of acute, rehabilitative, chronic and preventive services to inpatient and outpatient hospital patients; and

(C) All management, administrative, support, and coordinating services incident to the services named in the foregoing paragraphs (A) and (B), including tax, data processing, information systems, legal, finance, physician support service, management of processes (clinical and administrative) and marketing of individual and/or packaged health services.

SECTION 2. Tennessee Code Annotated, Section 67-4-808 is amended by adding the following new subsection:

(4) A hospital company filing a franchise/excise tax return on a combined basis as required in Section 67-4-812(f) [Section 4 of this Act], together with all other members of its combined group filing with it, shall be allowed as a credit against the combined annual franchise/excise tax imposed an amount equal to the lesser of the franchise tax or excise tax so that the combined annual franchise/excise tax of the combined group shall be limited to the greater of the two of them.

SECTION 3. Tennessee Code Annotated Section 67-4-808 is further amended by adding the following new subsection:

(5) A hospital company filing a franchise/excise tax return on a combined basis as described in Section 67-4-812, together with all members of its combined group filing with it, shall be allowed as a further credit against the combined annual franchise/excise tax imposed on the group remaining after application of the credit allowed under Section 67-4-

808(4) [Section 2 of this Act] an amount equal to four percent (4%) of the cost of medical supplies and medical equipment used by or placed in service by the members of the controlled group in this state during the tax year; provided, however, that the aggregate amount of the credit allowed to a taxpayer under Section 67-4-808(4) [Section 2 of this Act] together with the credit allowed to a taxpayer under this subsection shall not exceed Nine Million Dollars ($9,000,000) in any one tax year. A corporation or other entity shall be deemed to have used or placed in service medical supplies and medical equipment used or placed in service by a partnership or limited liability company of which it is a partner or member which would be a hospital company, as defined in Section 67-4-804(8)( ), [Section 1 of this Act], if it were a corporation or other entity upon which tax is imposed under parts 8 and 9 of this chapter, and would be a member of its same controlled group, as defined in Section 267(f)(1), Internal Revenue Code of 1986, as amended, if it were a corporation and its partners or members were shareholders. The amount of the cost of such medical supplies and medical equipment which is attributed to and deemed to have been used or placed in service by such corporation or other entity shall be equal to the pro rata portion of the cost of medical supplies and medical equipment used or placed in service by the partnership or limited liability company in the tax year. Such pro rata portion shall be determined based upon the corporation's or other entity's percentage of the profits and losses of such partnership or limited liability company during such tax year.

(C) As used in this subsection the term "medical equipment" shall have the same meaning as "major medical equipment" as defined in Section 68-11-102(11), but without the limitation therein as to the cost thereof, and the term "medical supplies" shall mean all apparatus, consumable products, appliances, drugs and pharmaceuticals, and all other tangible personal property used in provision of patient health care services, including all record keeping and documentation in connection therewith.

SECTION 4. Tennessee Code Annotated, Section 67-4-812, is amended by adding a new subsection designated as follows:

"(f) A hospital company, as defined in Section 67-4-804(a)( ), [Section 1 of this Act], for its first tax year beginning on or after the effective date of this Act, shall file its franchise/excise tax return on a combined basis together with all other corporations or other entities subject to the taxes imposed under parts 8 and 9 of this chapter which are members of its controlled group (as defined in Section 267(f)(1) of the Internal Revenue Code of 1986, as amended), and which are doing business in and taxable by this state, apportioned or allocated as to each member separately as herein provided in Sections 67-4-810 and 67-4-811, and then combined. Such combined franchise/excise tax returns shall be signed on behalf of one member of the combined controlled group for itself and on behalf of the other members of the combined controlled group, and such signature shall constitute representation and evidence of authority to file on behalf of all members of the combined controlled group. The combined return shall contain all financial statements and schedules that would be required of each member on a separate franchise/excise tax return. Each member's net earnings, or net loss subject to carryover, as the case may be, and each member's apportionment ratio, and applicable supporting schedules shall be computed separately as would be required by law if no combined return were required. The excise tax shall be computed for the combined group based on the combined earnings and net losses of the members as combined and shown on the combined return filed for members of the controlled group of companies doing business in this state. All excise tax payments and credits applicable to the members of such group shall then be offset against the group's combined excise taxes to compute the total excise taxes due or overpaid, as the case may be. The net operating losses available to each member of the controlled group shall be available for offset against the net earnings of the combined group in the first year of filing on a combined basis, and any portion thereof which is not used as an offset to net earnings

of the combined group in the first combined year shall be carried forward on a combined basis to be available as an offset to future net earnings of the combined group in accordance with and subject to the time limitations set forth in Section 67-4-805(b)(2)(c), provided that such combination shall not extend the time limitation of any then existing net operating losses. No member of the combined group may file its franchise/excise tax return on a separate basis without the consent of the Commissioner.

SECTION 5. Tennessee Code Annotated, Section 67-4-911, is amended by adding a new subsection designated as follows:

"(e) A hospital company, as defined in Section 67-4-804(a)( ), [Section 1 of this Act], for its first tax year beginning on or after the effective date of this Act, shall file its franchise/excise tax return on a combined basis together with all other corporations or other entities subject to the taxes imposed under parts 8 and 9 of this chapter which are members of its controlled group (as defined in Section 267(f)(1) of the Internal Revenue Code of 1986, as amended), and which are doing business in and taxable this state, apportioned as to each member separately as herein provided in Section 67-9-910(a), and then combined. Such combined franchise/excise tax returns shall be signed on behalf of one member of the combined controlled group for itself and on behalf of the other members of the combined controlled group, and such signature shall constitute representation and evidence of authority to file on behalf of all members of the combined controlled group. The combined return shall contain all financial statements and schedules that would be required of each member of the group on a separate franchise/excise tax return. Each member's franchise tax base, and each member's apportionment ratio, franchise tax, and applicable supporting schedules shall be computed separately as would be required by law if no combined return were required. The franchise taxes so computed for each member shall then be combined and shown on the combined return filed by members of the controlled group of companies doing business in this state. All franchise tax payments and credits applicable to the

members of such group shall then be offset against the group's combined franchise taxes to compute the total franchise taxes due or overpaid, as the case may be, on the combined return filed. No member of the combined group may file its franchise/excise tax return on a separate basis without the consent of the Commissioner.

SECTION 6. This act shall take effect upon becoming law, and shall apply to all tax years beginning on or after July 1, 1995, the public welfare requiring it; provided, however, that the provisions of Sections 2 and 3 of this Act shall not apply to tax years beginning on or after July 1, 2005.